

AMENDED IN SENATE JUNE 16, 1997

AMENDED IN SENATE JUNE 2, 1997

AMENDED IN ASSEMBLY MARCH 17, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 237

Introduced by Assembly Member Figueroa

February 6, 1997

An act to amend Sections 139.5 and 4644 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 237, as amended, Figueroa. Workers' compensation: vocational rehabilitation services: fees.

(1) Existing law requires the Administrative Director of the Division of Workers' Compensation to establish a vocational rehabilitation unit, that includes appropriate professional staff, and that has specified duties, including a requirement to establish the maximum aggregate permissible fees for evaluation, plan development, and job placement services.

This bill would instead establish a fee schedule that would permit up to \$3,000 for ~~feasibility determination, evaluation, and plan development~~ vocational evaluation, evaluation of vocational feasibility, initial interview, vocational testing, counseling and research for plan development, and preparation of a specified form and \$3,500 for ~~plan implementation and job placement~~ plan monitoring, job

seeking skills, and job placement research and counseling, but in no event would the aggregate of these categories exceed \$4,500.

(2) Existing law provides that if the employee is determined to be a qualified injured worker, and the employer notifies the injured worker that the employer will be unable to provide modified or alternative work to that injured worker, the qualified rehabilitation representative and the employee, jointly, shall develop an agreed-upon vocational rehabilitation plan. Existing law further provides that these plans shall be completed within an 18-month period after approval of the plan and shall not include a period of job placement exceeding 60 days.

This bill, instead, would provide that these plans shall not include a period of job placement exceeding 60 days unless the plan is exclusively utilizing transferable skills and experience for direct placement activities, in which case, the period of job placement may be up to 90 days and may be extended up to an additional 60 days under certain conditions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 139.5 of the Labor Code is
2 amended to read:

3 139.5. (a) The administrative director shall establish
4 a vocational rehabilitation unit, which shall include
5 appropriate professional staff, and which shall have the
6 following duties:

7 (1) To foster, review, and approve vocational
8 rehabilitation plans developed by a qualified
9 rehabilitation representative of the employer, insurer,
10 state agency, or employee. Plans agreed to by the
11 employer and employee do not require approval by the
12 vocational rehabilitation unit unless the employee is
13 unrepresented.

14 (2) To develop rules and regulations, to be
15 promulgated by the administrative director, providing
16 for a procedure in which an employee may waive the

1 services of a qualified rehabilitation representative
2 where the employee has been enrolled and made
3 substantial progress toward completion of a degree or
4 certificate from a community college, California State
5 University, or the University of California and desires a
6 plan to complete the degree or certificate. These rules
7 and regulations shall provide that this waiver as well as
8 any plan developed without the assistance of a qualified
9 rehabilitation representative must be approved by the
10 rehabilitation unit.

11 (3) To develop rules and regulations, to be
12 promulgated by the administrative director, which would
13 expedite and facilitate the identification, notification and
14 referral of industrially injured employees to vocational
15 rehabilitation services.

16 (4) To coordinate and enforce the implementation of
17 vocational rehabilitation plans.

18 (5) To develop a fee schedule, to be promulgated by
19 the administrative director, governing reasonable fees
20 for vocational rehabilitation services provided on and
21 after January 1, 1991. The initial fee schedule
22 promulgated under this paragraph shall be designed to
23 reduce the cost of vocational rehabilitation services by 10
24 percent from the level of fees paid during 1989. On or
25 before July 1, 1994, the administrative director shall
26 establish the maximum aggregate permissible fees that
27 may be charged for counseling. Those fees shall not
28 exceed four thousand five hundred dollars (\$4,500) and
29 shall be included within the sixteen thousand dollar
30 (\$16,000) cap. The fee schedule shall permit up to (A)
31 ~~three thousand dollars (\$3,000) for feasibility~~
32 ~~determination, evaluation, and plan development and~~
33 ~~(B) three thousand five hundred dollars (\$3,500) for plan~~
34 ~~implementation and job placement. However, in no~~
35 ~~three thousand dollars (\$3,000) for vocational evaluation,~~
36 ~~evaluation of vocational feasibility, initial interview,~~
37 ~~vocational testing, counseling and research for plan~~
38 ~~development, and preparation of the Division of~~
39 ~~Workers' Compensation Form 102, and (B) three~~
40 ~~thousand five hundred dollars (\$3,500) for plan~~

1 *monitoring, job seeking skills, and job placement research*
2 *and counseling. However, in no event shall the aggregate*
3 *of (A) and (B) exceed four thousand five hundred dollars*
4 *(\$4,500).*

5 (6) To develop standards, to be promulgated by the
6 administrative director, for governing the timeliness and
7 the quality of vocational rehabilitation services.

8 (b) The salaries of the personnel of the vocational
9 rehabilitation unit shall be fixed by the Department of
10 Personnel Administration.

11 (c) When an employee is determined to be medically
12 eligible and chooses to participate in a vocational
13 rehabilitation program, he or she shall continue to receive
14 temporary disability indemnity payments only until his or
15 her medical condition becomes permanent and
16 stationary and, thereafter, may receive a maintenance
17 allowance. Rehabilitation maintenance allowance
18 payments shall begin after the employee's medical
19 condition becomes permanent and stationary, upon a
20 request for vocational rehabilitation services. Thereafter,
21 the maintenance allowance shall be paid for a period not
22 to exceed 52 weeks in the aggregate, except where the
23 overall cap on vocational rehabilitation services can be
24 exceeded under this section or Section 4642 or subdivision
25 (d) or (e) of Section 4644.

26 The employee also shall receive additional living
27 expenses necessitated by the vocational rehabilitation
28 services, together with all reasonable and necessary
29 vocational training, at the expense of the employer, but
30 in no event shall the expenses, counseling fees, training,
31 maintenance allowance, and costs associated with, or
32 arising out of, vocational rehabilitation services incurred
33 after the employee's request for vocational rehabilitation
34 services, except temporary disability payments, exceed
35 sixteen thousand dollars (\$16,000). The administrative
36 director shall adopt regulations to ensure that the
37 continued receipt of vocational rehabilitation
38 maintenance allowance benefits is dependent upon the
39 injured worker's regular and consistent attendance at,

1 and participation in, his or her vocational rehabilitation
2 program.

3 (d) The amount of the maintenance allowance due
4 under subdivision (c) shall be two-thirds of the
5 employee's average weekly earnings at the date of injury
6 payable as follows:

7 (1) The amount the employee would have received as
8 continuing temporary disability indemnity, but not more
9 than two hundred forty-six dollars (\$246) a week for
10 injuries occurring on or after January 1, 1990.

11 (2) At the employee's option, an additional amount
12 from permanent disability indemnity due or payable,
13 sufficient to provide the employee with a maintenance
14 allowance equal to two-thirds of the employee's average
15 weekly earnings at the date of injury subject to the limits
16 specified in subdivision (a) of Section 4453 and the
17 requirements of Section 4661.5. In no event shall
18 temporary disability indemnity and maintenance
19 allowance be payable concurrently.

20 If the employer disputes the treating physician's
21 determination of medical eligibility, the employee shall
22 continue to receive that portion of the maintenance
23 allowance payable under paragraph (1) pending final
24 determination of the dispute. If the employee disputes
25 the treating physician's determination of medical
26 eligibility and prevails, the employee shall be entitled to
27 that portion of the maintenance allowance payable under
28 paragraph (1) retroactive to the date of the employee's
29 request for vocational rehabilitation services. These
30 payments shall not be counted against the maximum
31 expenditures for vocational rehabilitation services
32 provided by this section.

33 (e) No provision of this section nor of any rule,
34 regulation, or vocational rehabilitation plan developed or
35 promulgated under this section nor any benefit provided
36 pursuant to this section shall apply to an injured
37 employee whose injury occurred prior to January 1, 1975.
38 Nothing in this section shall affect any plan, benefit, or
39 program authorized by this section as added by Chapter

1 1513 of the Statutes of 1965 or as amended by Chapter 83
2 of the Statutes of 1972.

3 (f) The time within which an employee may request
4 vocational rehabilitation services is set forth in Sections
5 5405.5, 5410, and 5803.

6 (g) An offer of a job within state service to a state
7 employee in State bargaining unit 1, 4, 15, 18, or 20 at the
8 same or similar salary and the same or similar geographic
9 location is a prima facie offer of vocational rehabilitation
10 under this statute.

11 (h) It shall be unlawful for a qualified rehabilitation
12 representative or rehabilitation counselor to refer any
13 employee to any work evaluation facility or to any
14 education or training program if the qualified
15 rehabilitation representative or rehabilitation counselor,
16 or a spouse, employer, coemployee, or any party with
17 whom he or she has entered into contract, express or
18 implied, has any proprietary interest in or contractual
19 relationship with the work evaluation facility or
20 education or training program. It shall also be unlawful
21 for any insurer to refer any injured worker to any
22 rehabilitation provider or facility if the insurer has a
23 proprietary interest in the rehabilitation provider or
24 facility or for any insurer to charge against any claim for
25 the expenses of employees of the insurer to provide
26 vocational rehabilitation services unless those expenses
27 are disclosed to the insured and agreed to in advance.

28 (i) Any charges by an insurer for the activities of an
29 employee who supervises outside vocational
30 rehabilitation services shall not exceed the vocational
31 rehabilitation fee schedule, and shall not be counted
32 against the overall cap for vocational rehabilitation or the
33 limit on counselor's fees provided for in this section.
34 These charges shall be attributed as expenses by the
35 insurer and not losses for purposes of insurance rating
36 pursuant to Article 2 (commencing with Section 11730)
37 of Chapter 3 of Division 2 of the Insurance Code.

38 (j) Any costs of an employer of supervising vocational
39 rehabilitation services shall not be counted against the

1 overall cap for vocational rehabilitation or the limit on
2 counselor's fees provided for in this section.

3 SEC. 2. Section 4644 of the Labor Code is amended to
4 read:

5 4644. (a) The liability of the employer for vocational
6 rehabilitation services shall terminate when any of the
7 following events occur:

8 (1) An employee who has received notice of potential
9 eligibility to participate in a rehabilitation plan under
10 Section 4637 declines vocational rehabilitation services in
11 the form and manner prescribed by the administrative
12 director.

13 (2) A qualified injured worker completes a vocational
14 rehabilitation plan except as otherwise provided in
15 subdivisions (c) and (d).

16 (3) The qualified injured worker unreasonably failed
17 to complete a vocational rehabilitation plan.

18 (4) An employee has not requested vocational
19 rehabilitation services within 90 days of the notification
20 that the employee is medically eligible for vocational
21 rehabilitation services. The liability of the employer for
22 vocational rehabilitation services shall not terminate
23 under this paragraph unless the employer, not earlier
24 than 45 days nor later than 70 days after the employee's
25 receipt of the notice required by Section 4637, reminds
26 the employee of his or her right to vocational
27 rehabilitation services or until the 21st day after the
28 employee receives the reminder notification. The
29 reminder notification shall be in writing, in the form and
30 manner prescribed by the administrative director, and
31 shall be served by certified mail. The provisions of this
32 paragraph shall not apply if the employee shows he or she
33 was unable to comprehend the consequences of failing to
34 timely request vocational rehabilitation services, or that,
35 because of conditions beyond the control of the
36 employee, the employee was unable to exercise his or her
37 right to accept or decline vocational rehabilitation
38 services.

39 (5) The employer offers, and the employee accepts or
40 rejects, in the form and manner prescribed by the

1 administrative director, modified work lasting at least 12
2 months, provided that an employer who offers modified
3 work that is available for the 12-month period required by
4 this paragraph meets the requirements of this paragraph
5 even if the employee voluntarily quits prior to the end of
6 that 12-month period.

7 (6) The employer offers and the employee accepts or
8 rejects, in the form and manner prescribed by the
9 administrative director, alternative work meeting all of
10 the following conditions:

11 (A) The employee has the ability to perform the
12 essential functions of the job provided.

13 (B) The job provided is in a regular position lasting at
14 least 12 months. An employer who offers alternative work
15 that is available for the 12-month period required by this
16 paragraph meets the requirements of this paragraph
17 even if the employee voluntarily quits prior to the end of
18 the 12-month period.

19 (C) The job provided offers wages and compensation
20 that are within 15 percent of those paid to the employee
21 at the time of injury.

22 (D) The job is located within reasonable commuting
23 distance of the employee's residence at the time of injury.

24 (7) The employer offers, and the employee accepts, in
25 the form and manner prescribed by the administrative
26 director, work not meeting the conditions of paragraph
27 (5) or (6) provided that the work lasts at least 12 months.
28 The employee shall be required to reject the offer, in the
29 form and manner prescribed by the administrative
30 director, in order for the employee to be eligible for
31 vocational rehabilitation services. An employer who
32 offers work that is available for the 12-month period
33 meets the requirements of this paragraph, even if the
34 employee voluntarily quits prior to the end of that
35 12-month period.

36 (b) Nothing in this article shall preclude the deferral
37 or interruption of vocational rehabilitation services upon
38 agreement of the employee and employer or, if no
39 agreement can be reached, upon a good cause
40 determination by the administrative director.

1 (c) (1) Except as provided in this section, vocational
2 rehabilitation plans prepared pursuant to Section 4638
3 shall be limited to one plan per injured worker. The plans
4 shall be completed within an 18-month period after
5 approval of the plan. The plan shall not include a period
6 of job placement exceeding 60 days unless the plan is
7 exclusively utilizing transferable skills and experience for
8 direct placement activities. In these cases, the period of
9 job placement may be up to 90 days, and may be extended
10 up to an additional 60 days when all of the following
11 conditions are met:

12 (A) The plan includes quantitative requirements,
13 including, but not limited to, the minimum number of
14 employer contacts per week to be made by the employee,
15 minimum number of résumés or applications per week to
16 be submitted, as well as other specific job-seeking
17 activities required of the employee.

18 (B) The employee has cooperated fully by complying
19 with the responsibilities and quantitative requirements
20 established in the plan.

21 (C) The parties agree to the extension.

22 (2) The employee shall be entitled to one additional
23 vocational rehabilitation plan only if the original plan is
24 determined to be inappropriate due to one of the
25 following:

26 (A) The employee's disability has deteriorated to the
27 point where the worker is unable to meet the physical
28 demands of the first plan.

29 (B) The first plan is disrupted due to circumstances
30 beyond the control of the employee.

31 (C) Failure by the employer to provide timely service
32 required by this article and the vocational rehabilitation
33 plan when the plan has not been completed.

34 The cost of the original and the additional plan plus all
35 other vocational rehabilitation costs shall not exceed the
36 overall cap and the counselor fee cap established in
37 subdivision (c) of Section 139.5.

38 (d) Notwithstanding subdivision (c), an employee
39 may apply to the rehabilitation unit for approval of a
40 second vocational rehabilitation plan which exceeds the

1 overall cap provided for in subdivision (c) of Section 139.5
2 if all of the following conditions are met:

3 (1) The employee has a permanent disability rating of
4 25 percent or greater. In reaching this determination, the
5 rehabilitation unit shall consider any treating physicians'
6 reports.

7 (2) The first plan cannot be completed due to
8 circumstances beyond the control of the employee. Those
9 circumstances include the deterioration of the
10 employee's disability to the point where the worker
11 cannot meet the requirements of the first plan.

12 (3) The rehabilitation unit finds that a second plan is
13 necessary to provide the employee the opportunity for
14 suitable gainful employment. Approval for circumstances
15 other than a change in the employee's disability must be
16 based on objective and verifiable facts pursuant to rules
17 promulgated by the administrative director.

18 However, in no case shall the cost solely attributable to
19 the second plan exceed the overall cap and the counseling
20 fee cap contained in subdivision (c) of Section 139.5.

21 (e) Notwithstanding subdivision (c), an employee
22 may receive a second vocational rehabilitation plan that
23 exceeds the overall cap provided for in subdivision (c) of
24 Section 139.5 if the rehabilitation unit finds that the
25 employee cannot complete the plan because the school
26 or other training facility has closed or the worker has a
27 sudden and unexpected change in disability that renders
28 the plan inappropriate or other similar circumstances.

29 (f) Notwithstanding paragraph (2) of subdivision (a),
30 if a qualified injured worker returns to modified or
31 alternative work with the same employer or to work with
32 a different employer as a result of direct job placement
33 assistance and that employment terminates, other than
34 for cause, within 12 months of the date the employee was
35 employed at the modified or alternative work, and if that
36 work is unavailable in the labor market, the employer
37 shall be liable, subject to Section 4642, for additional
38 vocational rehabilitation services, provided that the
39 employer's liability for vocational rehabilitation services
40 shall terminate if the employee voluntarily quits prior to

1 the end of that 12-month period. To qualify for additional
2 vocational rehabilitation services, the employee shall
3 demonstrate an inability to compete for suitable gainful
4 employment with his or her existing skills.

5 (g) An employer shall not be liable to provide
6 vocational rehabilitation services at a location outside the
7 state, unless upon agreement of the employer and the
8 employee, or a determination by the Division of Workers'
9 Compensation that those services are more cost-effective
10 than similar services provided in the state.

